

### **REMARKS**

This is in response to the outstanding non-final Office Action dated June 10, 2009<sup>1</sup>. Claim 8 has been amended. Support for this amendment can be found in at least page 12, lines 2-15 of the Specification. Claims 8, 11, 16 and 17 are currently pending in this application.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claims 8, 11, 16 and 17 are rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Applicants submit that the amendment to claim 8 is sufficient to overcome the 35 U.S.C. § 112 rejection and respectfully request that the rejection be withdrawn.

#### **Claim Rejections Under 35 U.S.C. § 103**

Claims 8, 11, 16 and 17 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over U.S. Patent No. 6,160,200 to Ehrnsperger et al. ("*Ehrnsperger*") in view of U.S. Patent No. 4,740,402 to Maeda et al ("*Maeda*").

*Ehrnsperger* discloses a directionally preferential waste passage member for use with a disposable absorbent article. The waste passage member includes a soluble material, which is dissolved by substances found in human or mammalian bodily waste (*Ehrnsperger*, col. 10, lines 36-41). *Ehrnsperger* also discloses that various properties of the body waste may trigger or initiate the dissolution of material, including, but not limited to, moisture, pH, enzymes, temperature, pressure, chemicals (e.g. salts, proteins) and the like (*Ehrnsperger*, col. 10, lines 50-53). In *Ehrnsperger*, the waste passage member contains a soluble material. When the bodily waste soluble material contacts excretions, it is fluidized to allow the excretions to pass through to the topsheet side.

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<sup>1</sup> The record shows that two identical Office Actions were mailed. The first Office Action was incorrectly mailed to the Attorney's previous address on March 31, 2009. The second Office Action was mailed to the Attorney's correct address of record on June 10, 2009. As the first Office Action was sent in error, and the Office Action was remailed, under M.P.E.P. 707.13, "the period running against the application begins with the date of remailing."

Claim 8 recites a support layer that absorbs moisture in the presence of the wearer's sweat and excretions, and is fluidized, and, after the thus-fluidized support layer has moved, the skin-protecting ingredient containing layer is exposed outside to form an oily film (emphasis added). Conversely, the waste passage member 60 of *Ehrnsperger* is formed to allow the excretions to pass through to the topsheet side preventing the excretions from contacting the skin. *Ehrnsperger* does not teach or suggest that the inside material (skin-protecting ingredient) is exposed outside as recited in claim 8. *Maeda* also does not teach or suggest a skin-protecting ingredient as described in claim 8.

Furthermore, claim 8 recites "a support layer substantially entirely and directly coating a skin-protective ingredient containing layer." As shown in a cross-section drawing of Fig. 2 in *Ehrnsperger*, there is space between the waste passage member 60 and the topsheet 24. This space is for retaining the excretions that have passed to the topsheet side. As described in *Ehrnsperger*, the waste passage member 60 is formed separately and joined about its peripheral edges (*Ehrnsperger* 17:56-60). Though *Ehrnsperger* discloses that the waste passage member 60 may be integral with or joined to the topsheet, it does not disclose that the waste passage member 60 substantially entirely and directly coats the topsheet. *Maeda* also does not teach or suggest a support layer substantially entirely and directly coating a skin-protective ingredient containing layer as described in claim 8.

Finally, *Ehrnsperger* discloses that "upon excretion, the bodily wastes dissolve a portion of the waste passage member, thereby eliminating the structural integrity of at least a portion of the waste passage member, preferably in the region of the contact between waste and the waste passage member, allowing passage of the waste" (*Ehrnsperger*, 10:44-49). Applicants submit that the dissolving of the soluble member of *Ehrnsperger* is not related to the release of the skin-protective ingredient onto the skin, but with the elimination of waste away from the skin. Thus, while the skin-protective ingredient of *Ehrnsperger* may be disposed on any part of the topsheet, it is not at all related to the dissolving of the soluble member which is disposed on only the central part of the sheet where waste is introduced (*see Ehrnsperger*, Figure 1). Thus, *Ehrnsperger* does not teach or suggest a support member "capable of releasing a skin-protective ingredient by dissolving in the

presence of the wearer's sweat and excretions." *Maeda* also does not cure this deficiency of *Ehrnsperger*.


Applicants submit that for at least these reasons, claim 8, as well as claims 11, 16 and 17, which depend therefrom are patentable over the cited references and respectfully request that the rejections under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

It is respectfully submitted that each of the presently pending claims are in condition for allowance and notification to that effect is requested. The Examiner is invited to contact the Applicants' representative at the below-listed telephone number if it is believed that the prosecution of this application may be assisted thereby.

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Respectfully submitted,

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